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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 004811

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SUBJECT: PAKISTAN: MUSHARRAF DUAL OFFICES BACKGROUNDER

Classified By: Ambassador Anne W. Patterson, Reasons 1.4 (b), (d)

11. (U) President Pervez Musharraf currently serves as both President of the Islamic Republic of Pakistan and Chief of Army Staff. This dual office role is permitted under the 17th amendment to the Pakistani Constitution, which specifically allowed Musharraf to hold both offices through December 2004.

12. (U) In December 2004, the Pakistani parliament adopted the "President to Hold Another Office Act." This legislation specifically allowed President Musharraf to continue as President and Chief of Army Staff until the expiration of his current presidential term on November 15, 2007. It provided an exemption to the revolving door law that bars government employees (including Musharraf as a serving Army officer) from seeking elected office for two years after leaving government service. The Pakistani government contends that these two pieces of legislation allow Musharraf to remain concurrently President and Chief of Army Staff until the November 15 deadline.

13. (U) On October 6, Pakistan's electoral college re-elected Musharraf as President. However, the Supreme Court ruled that the Election Commission could not officially announce the results of the election until the Court ruled on two cases challenging Musharraf's eligibility to be a candidate. Those cases, filed by two presidential challengers, claimed that Musharraf was ineligible because he was still Chief of Army Staff.

14. (C) On November 3, Musharraf (acting as Chief of Army Staff) imposed a State of Emergency, fired the Supreme Court justices, and suspended key civil liberties provisions of the Constitution. He acted to prevent what he believed was an imminent Supreme Court ruling to declare him ineligible for the election he won on October 6.

15. (C) The government is in the process of reconstituting the Supreme Court by choosing judges willing to take an oath of allegiance to support the Provisional Constitutional Order. A newly reconstituted Supreme Court is expected to begin hearing Musharraf's eligibility case November 13/14; the proceedings are expected to take 4-5 days. We expect Musharraf's new hand-picked Court to rule in his favor.

16. (U) Under normal circumstances, President Musharraf must resign one of his offices, either President or Chief of Army Staff, no later than November 15. However, the Provisional Constitutional Order allows him to ignore these normal

constitutional provisions.

¶7. (U) Pakistani law maintains that in the event that a President's term expires prior to his successor's selection, the outgoing incumbent continues in office until such time as his successor is sworn into office. This means that Musharraf can continue as President until the presidential election is validated and he is sworn-in for a second term.

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Parliamentary Election Process:  
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¶8. (U) The term of Pakistan's National Assembly expires on November 15. The terms of the four Provincial Assemblies expire between November 15 and December 24. The law says that elections must be scheduled within 60 days after an assembly's term expires. If an assembly is dissolved early, elections must be held within 90 days.

¶9. (U) On November 8, Musharraf announced that parliamentary elections would be held before February 15. The Election Commission has yet to announce a specific date.

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Caretaker Government  
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¶10. (U) As the assemblies end, the incumbent federal and provincial governments cease to hold office. The Pakistani Constitution, if followed, maintains that President Musharraf must immediately appoint a neutral federal caretaker government to govern until a new government is sworn in.

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Under a caretaker government, the President continues to govern and the Armed Forces continue to report to the President. At the provincial level, the President may either appoint caretaker governments or allow governors to rule directly. Based on the election results, the new parliament will choose a new prime minister.

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